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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,993	03/07/2005	Bret A Ferree	BAF-15202/29	6979
25006 7590 12/03/2008 GIFTORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021				
EXAMINER				
PRONE, CHRISTOPHER D				
ART UNIT		PAPER NUMBER		
3738				
MAIL DATE		DELIVERY MODE		
12/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,993

Applicant(s)

FERREE, BRET A

Examiner

CHRISTOPHER D. PRONE

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) 2-6-8-10-16 and 18-23 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3-5-9 and 17 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/9/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of species 21 and claims 1-6, 8-14, 17-23 in the reply filed on 9/25/08 is acknowledged. The traversal is on the ground(s) that basic modifications do not present a burdensome search. This is not found persuasive because each of these modifications will require separate detailed searches that are an undue burden.

The requirement is still deemed proper and is therefore made FINAL.

Upon further review claims 2, 6-8, 10-16, and 18-23 are withdrawn for being directed toward nonelected species.

Claim 2 is directed to piston component which is shown figure 45a represented by species 24.

Claims 6 is directed to endplates which is shown figure 3 represented by species 2.

Claim 8 is directed to hip replacement which is shown figure 3 represented by species 2.

Claim 10 is directed to rate of the fluid being expelled and returned which is described in relation to figure 26 represented by species 12.

Claim 11 is directed to spring components which is shown figure 24 represented by species 11.

Claim 12 is directed to a membrane which is shown figure 43b represented by species 22.

Claim 13 is directed to multiple bodies connected with multiple reservoirs which is shown figures 11-15 represented by species 7.

Claim 14 is directed to wheel component which is shown figure 1 represented by species 1.

Claims 18-23 are directed to biological constituents incorporated into an extra cellular matrix which is shown described and shown in relation to figure 48 represented by species 26.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 9, and 17 rejected under 35 U.S.C. 102 (b) as being anticipated by Ray et al. USPN 4,772,287.

Ray discloses the same invention being a prosthetic disc implant comprising a body 12 containing a first reservoir 20 connected to a second reservoir 24 by a member 22a that allows a fluid to flow between the two reservoirs. Ray further discloses that the fluid may comprise numerous materials including water and oils.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571)272-6085. The examiner can normally be reached on Monday through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone
Examiner
Art Unit 3738

/CDP/

/Corrine M McDermott/

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Supervisory Patent Examiner, Art Unit 3738